

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 252.

JOHN W. COLLIER, ADMINISTRATOR OF JAMES E.
RANCK, DECEASED, APPELLANT,

vs.

THE UNITED STATES AND THE APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 7, 1898.

(16,811.)

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In the Court of Claims.

JAMES E. RANCK
vs.
THE UNITED STATES and APACHE INDIANS. } Indian Depredation. No. 2429.

I.—Petition. Filed June 11, 1891.

To the honorable the Chief Justice and justices of the Court of Claims:

Your petitioner, James E. Ranck, respectfully represents that he is a citizen of the United States, and resident of Mason county, Texas, and that his post-office address is Mason, Mason county, Texas.

That he was the owner of the following-described property, which was taken, used, or destroyed on the 2d day of March, A. D. 1869, on the Rio Azul, near the line of Texas and New Mexico, by the Apache Indians, without just cause or provocation on the part of the owner or the person in charge, to wit:

800 beef cattle, worth \$40 per head.....	\$32,000
1,025 stock cattle, worth \$20 per head.....	20,500
17 horses, worth \$50	850

Total.....	\$53,350
2 Of this property claimant recovered on the 10th day of April, 1869, at Fort Stanton, New Mexico, 35 head of cattle, poor and worn from having been driven, and worth at that time \$12 each	420

Making a net loss of	\$52,930

That said tribe of Indians, at the time said losses occurred, was in amity with the United States; and the said United States has supervisory charge of the said tribe of Indians, and is justly indebted to your petitioner in the sum of \$52,930, the value of said property when taken, used, or destroyed, as aforesaid, by the said Apache Indians.

That a claim for compensation for said property was duly filed in the Department of the Interior on April 17, 1877, for payment, and numbered 1683, but the said sum has never been paid, nor any part thereof.

Your petitioner therefore prays, upon the facts and the law, a judgment against the United States for the said sum of \$52,930, in pursuance of the act of Congress approved March 3, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

JAMES E. RANCK,
By GARLAND & MAY, Attorneys.

GARLAND & MAY,

Attorneys for Claimant,

1209 F St. N. W., Washington, D. C.

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

Heber J. May, being first duly sworn, says that he is an attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof or any interest therein, has been made, to his knowledge, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States, after allowing all just credits and set-offs; and that all the facts stated in the petition are true as he verily believes.

HEBER J. MAY.

Subscribed and sworn to before me this 10th day of June, A. D. 1891.

[SEAL.]

JOHN T. MITCHELL,
Notary Public.

3 II.—*General Traverse.* *Filed April 27, 1896.*

Comes the assistant attorney general, on behalf of The United States and the defendant Indians, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

E. C. FOSTER,
Acting Assistant Attorney General.

III.—*Suggestion of Death of Claimant and Administrator Substituted.*

Now comes Garland and May, attorneys for claimant, and suggest the death of James E. Ranck, and move the court that J. W. Collier, administrator of the estate of the decedent, may be admitted to prosecute this suit, and duly authenticated copies of the record of the appointment of said J. W. Collier as such administrator are filed herewith.

GARLAND AND MAY,
Attorneys for Claimant.

Filed January 4, 1893.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

4 IV.—*Findings of Fact as Amended and Conclusion of Law.*
Filed January 19, 1898.

JOHN W. COLLIER, Adm'r of James E. Ranck, Deceased, }
 vs. }
 THE UNITED STATES and THE APACHE INDIANS. }

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Finding.

The alleged depredation was committed on or about the 2d day of March, 1869, in the southeastern part of the Territory of New Mexico, by Mescalero Apache Indians, who at the time and place were not in amity with the United States. The property so taken by the Indians was worth more than the sum of three thousand dollars (\$3,000).

The court determines that the Mescalero Indians were not in amity at the time of the depredation from the following official reports, documents, and facts deduced from the testimony of witnesses, which are set forth in the findings:

(Extract from Report of Brevet Major General George W. Getty (Dated October 8, 1869) of the Military Operations in the District of New Mexico Ending June 30, 1869.)

" Fort Craig, New Mexico, situated on the west bank of the Rio Grande, about 180 miles south of Santa Fé, is well located to control important crossings of the river and to prevent incursions northward of the hostile Apaches from the south and southwest. The post would also be important in case of an outbreak of the Navajo

Indians at Fort Wingate; has five sets of officers' quarters, 5 four men's quarters, four store-houses, hospital, cavalry stable, corral, grain-room, bake-house, magazine, and four sets of laundresses' quarters. Commanding officer, Brevet Major General Cuvier Grover, lieutenant colonel 38th U. S. infantry.

Fort Stanton, N. M., situated about 80 miles east of Fort Craig, on a tributary of the Rio Pecos, protects the settlements in its vicinity, and is a good point from which to send out scouting parties against the Mescalero Apaches. * * *

Sixty-two scouts, mostly from the southern posts and operating against the Apache Indians, have been ordered since June 30, 1868. They were composed, in all, of 75 officers and 2,254 men, and marched a total distance of 14,913 miles. This gives the favorable average of about 1 officer, 35 men, and distance marched 250 miles to each scout. The immediate results have been 6 Indians killed, 5 wounded, 3 prisoners, 111 animals captured, and large quantities of provisions, robes, arms, and utensils and other property usually found in Indian camps. Besides these, 3 Indian villages were destroyed. Our loss has been 2 men killed and 2 wounded. This statement does not include the expedition east of Fort Bascom or the Canadian river under Colonel Evans during the winter, of which a special and detailed report has been forwarded.

The great pests of the district have been the Mescalero Apaches, who infest all the southern portions of the Territory and sometimes extend their operations in small parties as far north as Santa Fé.

They live almost entirely from the results of their thieving expeditions, are adventurous and cunning, and probably excel all other Indians in cruelty. The small size of their parties and the

extremely mountainous and wild nature of the country render any successful pursuit a matter of great difficulty and frequently of impossibility.

The scouts mentioned in this report have been mainly directed against these Indians. They number some 450 men, women, and children, but their warriors are usually accompanied in their expeditions by a few Navajoes and Miembres and Mongollon Apaches."

(*Extract from Report of Commissioner of Indian Affairs, 1869, p. 22.*)

"Mescalero Apaches are reported to number 525, and roam over the southeast part of the Territory (New Mexico). Since their escape in 1865 from the Bosque Redondo reservation they have doubtless been guilty of a number of murders and depredations. Before this they were peaceable and friendly. Such is the mountainous character of their country that it is difficult for troops to find them, as it is said in July last a scouting force of 65 men, under an officer, passed through it, and only by accident was a party of seven Apaches discovered. It seems to be the general opinion that these Indians should have a reservation set apart for them near Fort Stanton, in their old home, upon which could also be placed other Apaches. The country contains an abundance of wood, water, and game and is every way suitable."

(*Extracts from Report of Secretary of Interior, 1869, pp. 244-'6.*)

"AGENCY OF THE MESCALERO APACHES,
AGUA NEGRA, N. M., June 30, 1869.

SIR: In compliance with your instructions dated the 27th of May, I have the honor very respectfully to inform you that during the time that has elapsed since my last annual report the Mescalero Apaches under my charge *has* not visited this agency.

It is said that they have been committing some depredations in the vicinity of Fort Stanton, troubling the inhabitants of that frontier, killing people, and stealing property.

There can be no doubt that these Indians, having escaped from the reservation at Bosque Redondo, and being more at large in their own country, may have resorted to depredations against the whites. Their propensity to do evil and the manner in which they live have induced them to commit such wrongs.

The scarcity of means, in the first place, and my not having received instructions from my superiors have prevented me from taking steps to collect these Indians together and warn them from committing any more outrages upon the inhabitants of the country.

For a long time past my recommendations have been very frequent, urging the department to take some measures to establish these Indians upon reservations in their own country.

The experience in the personal character of these Indians and of

all other Indians of the country have shown me that the only way to civilize them is by adopting the system of reservation.

In many instances the Mescalero Apaches have proved to be industrious during the time they were on the reservation at Bosque Redondo, as will be seen by reference to my previous reports, in which I have expressed my opinion in regard to them.

When these Indians were on the reservation they fully showed themselves to be in favor of civilization; all of them were engaged in agricultural pursuits, planting different kinds of seed, and manifesting a profound interest — the ditch (acequia), but also on other things; the men worked cheerfully, and the women assisted them in cleaning up their fields, which were covered with mesquite (a kind of root very difficult to be dug up); they worked with pleasure and lived contented. Their difficulties that I have mentioned in my other reports with the Navajoes compelled them to abandon the reservation and go to their old country. Now they roam at pleasure, committing depredations; this, in my opinion, could be easily stopped by requiring them to cease their lawless acts and settle upon a new reservation. They express a desire to have schools and missionaries, and promise to do anything the Government may require of them for their welfare, provided that the reservation may be established in the place already recommended by me in my previous reports.

It would be well for the Government to take the matter in hand at once to avoid difficulties by delay, for should it finally become necessary to declare war against this tribe they will be ruined, and it might result in their total extermination.

By keeping these Indians, as suggested, they will, with the assistance of their agent, induce all other hostile bands with but little trouble to come upon the reservation. This plan would save the Government an enormous expense, and in the course of a short time they will make a large settlement of civilized people. This is the only way to collect these bands together, which for a long time have been depredating upon the country.

The frequent depredations committed by these Indians upon the whites demand the earnest attention of your department.

I am, very respectfully, your obedient servant,

(Signed)

LORENZO LABADI,
U. S. Indian Agent.

Hon. E. S. Parker, Commissioner of Indian Affairs."

"FORT STANTON, N. M., August 31, 1869.

SIR: I have the honor to submit the following as my annual report of the condition of the Mescalero Apache Indian agency for the period from July 23 to August 31, 1869, inclusive, viz:

I have not, since I entered upon the duties of agent for the Mescalero Apaches (July 23, 1869), seen an Indian of the tribe, but have, I believe, obtained a sufficient amount of information from the late agent, Lorenzo Labadi, Esq., and from the officers of the army sta-

tioned in the Territory to set forth the condition of the tribe as accurately as if I had seen the Indians.

This tribe was settled upon the Bosque Redondo with the Navajoes, but the two tribes could not agree, and the Mescalero Apaches left the reservation in November, 1865, in order to avoid a serious difficulty with the Navajoes. Since leaving the reservation they have been ranging south of Fort Stanton, N. M., sometimes making raids very near the post.

It is a very difficult matter for the troops at the post to find these Indians, on account of the large extent of mountainous country over which they range; but Lieutenant Colonel Frank Stanwood, captain Third U. S. cavalry, left this post with a detachment of 65 men of the Third cavalry on the 25th day of last July on a scouting expedition, passed through the country infested with these Indians, and went as far as Fort Bliss, Texas, and it was by accident that a party of 4 or 5 Indians were seen by the command during the time.

From what I can learn, I believe that these Indians can be brought in and settled upon a reservation if the proper assurance can be given them, and if the Government will give them the same amount of assistance that it gives to other Indians under the same circumstances.

Mr. J. M. Gallegos, late superintendent of Indian affairs for New Mexico, informed me that several Mexican gentlemen called upon him in December, 1868, and stated that they were authorized by the Mescalero Apache tribe to inform him that they desired to settle upon a reservation and live at peace. I believe that they were peaceable before the difficulty occurred between them and the Navajoes, and that they are sincere in their desire for peace.

As it is the policy of the Government to settle all the Indians upon reservations and assist them to live by the pursuits of civilized life, the only thing now necessary to settle this tribe is to furnish the means necessary for their support.

8 The tribe numbers at present 525 souls, and in my report for the month of July, 1869, I submitted for the consideration of the department estimates of goods and subsistence necessary to relieve their present wants.

The military reservation at this point contains about 500 acres of land suitable for agricultural purposes, and I respectfully suggest that the reservation for the tribe be established south of the post. It is the native country of these Indians and contains an abundance of wood, water, game, and pasture, and the Indians can be placed upon the reservation without expense.

Anticipating that these Indians will come in and settle upon a reservation if they are sure of the assistance of the Government, I respectfully suggest that the following sums be appropriated for the purpose of assisting them, viz.

For subsistence for one year, estimated:

One-half ration of beef, 95,812 lbs., at 7 cts.....	\$6,706.84
Full ration of salt, 240 bushels, at \$2.50.....	600.00
Full ration of corn, 4,488 bushels, at \$2.25.....	10,098.00
	—————
	\$17,404.84

For presents, consisting of articles absolutely necessary for the comfort of the Indians, a sufficient amount to purchase and transport to this post the articles on list A, hereto appended, estimated.....	7,000.00
	—————
	\$24,404.84

The condition of the agency is such as not to require any statistical tables to be attached to this report.

Very respectfully, your obedient servant,

A. G. HENNISEE,

First Lieutenant United States Army, Indian Ag't.

Hon. E. S. Parker, Commissioner of Indian Affairs."

Also the following reports:

HEADQUARTERS INDIAN EXPEDITION,

IN CAMP AT CARISO SPRINGS, TEXAS, May 4th, 1869.

A. A. A. G., district of New Mexico, Santa Fé, N. M.

SIR: I have the honor to report for the information of the major general commanding, that I arrived at this place at 10 o'clock a. m. today, and have sent a pack train to Fort Quitman, Texas, for rations to include the last day of this month.

* * * * *

On the 21st day of April, I met Gen. Brooke's command at 10 o'clock p. m., near the mouth of Cañon Sangre Christo. The General informed me that he had just burned an abandoned rancheria, and had picked up some 50 head of cattle left by the Indians. He also informed me he had marched from Fort Stanton on the 9th of April, with a train of wagons and two pieces of artillery, and had established a camp on Pecos river, and from there had marched down the east side of the Guadalupe mountains to where I met him.

* * * * *

From my supply camp I scouted the country along the Delaware creek, north and south, marching some 209 miles, finding no Indians, but numerous abandoned rancherias and evidences of large herds of cattle having been there some months previous; in fact, since leaving the Carnudos, up to this date, I have found no difficulty in securing sufficient beef cattle for the command.

* * * * *

Very respectfully, y'r obed't serv't,

ALEX. MOORE,

Bt. Maj. U. S. A., Capt. 38th Inf'y, Com'dg Exped.

Official.

SAM'L BRECK,

Ass't Adjutant General.

A. G. office, Nov. 19, '90.

9 SAN CARLOS INDIAN AGENCY, A. T., June 1st, 1877.

To the Hon. Commissioner of Indian Affairs, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of office letter (C), dated May 22nd, inclosing papers pertaining to the claim of James E. Ranck, for \$52,850 on account of a depredation alleged to have been committed by Southern Apache Indians in 1869. And in compliance with instructions contained in said letter I have examined the said claim, in accordance with department rules, and find that the depredation alleged was not committed by Southern Apache Indians. The country mentioned in the sworn declaration of applicant was roamed over by Mescalero Apache Indians at the time of the alleged depredation, the Southern Apache Indians confining their depredations to Arizona, western New Mexico, Sonora, and Chihuahua.

I respectfully suggest that the claim be referred to the agent for the Mescalero Apaches, at Fort Stanton, N. M. I return the papers pertaining to the claim herewith.

Very respectfully, your obedient servant,

JOHN P. CLUM,

U. S. Indian Agent,

By M. A. SWEENEY,

Act. Agent and Atty.

Report on the Depredation Claim of James E. Ranck.

Having before me for investigation the claim of James E. Ranck, for depredations alleged to have been committed by Apache Indians, I convened a council of the head men of the Mescaleros, at their agency, on the 4th day of February, 1887. This council was composed of the following persons, to wit: Nautzilla, Peso, José, Treas, Charley, Muchacho Grande, Big Chops, Camisa, Shash, Chivata, Francisco Onero, White Face, Chimal, and Cayatana. The nature of said claim having been fully explained to said *claim*, the members were interrogated individually as to their knowledge, direct or indirect, of the depredation upon which the said claim was based. Each man disclaimed any knowledge whatever of the alleged depredation, speaking both for himself and his band.

Of the credibility of the persons whose affidavits accompany this claim I cannot say anything, as I have been unable to secure the presence of either claimants or their witnesses at this investigation, or persons to establish their trustworthiness.

The values set upon the property alleged to have been stolen are fair and equitable, according to my information as to prices ruling in the locality at that time.

The validity of the claim depends, in my opinion, entirely upon the credibility of the deponents in the case. Taking it for granted that their depositions are all true, I should, of course, recommend the payment of the claim.

Respectfully submitted.

FLETCHER J. COWART,

U. S. Indian Agent.

To the Hon. Commissioner of Indian Affairs.

10 At the time of depredation the cattle were in charge of the employés of the decedent, being driven from Mason county, Texas, to New Mexico, and were taken by the Indians and driven in the direction of Guadeloupe mountains, New Mexico. The number of the Indians at the time of the capture was about fifty. The cattle at the time of the depredation were in charge of eight persons. The attack was made about daylight. The Indians fired on the men in charge and the men took refuge behind the wagons; two of the Indians were taken off as dead.

Conclusion of Law.

Upon the foregoing findings the court decides as a conclusion of law that the petition be dismissed for want of jurisdiction.

BY THE COURT.

Filed January 19, 1898.

11 V.—*Judgment of the Court.*

JOHN W. COLLIER, Administrator of James E. Ranck, Deceased, vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian Depredation.

At a Court of Claims held in the city of Washington on the 19th day of January, A. D. 1898, judgment was ordered to be entered as follows:

The court on due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that the petition of the claimant be dismissed.

BY THE COURT.

12 VI.—Application of Claimant for and Allowance of Appeal.

JOHN W. COLLIER, Administrator of James E. Ranck, Deceased, vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian Depredation.

Comes the claimant in the above-entitled cause and prays an appeal to the Supreme Court of the United States from the final judgment rendered by the Court of Claims on the 19th day of January, 1898, dismissing the claimant's petition.

GARLAND AND MAY,
Attorneys for Claimant.

Filed February 17, 1898.

Ordered that the application of the claimant in the above-entitled cause for an appeal be allowed as prayed for.

February 17, 1898.

BY THE COURT.

13

In the Court of Claims.

JOHN W. COLLIER, Administrator of James E. Ranck, Dec'd,
vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian
Depredation.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the final judgment of the court, of the application of claimant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set
Seal Court of Claims. my hand and affixed the seal of said court,
at Washington, this 5th day of March, 1898.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16,811. Court of Claims. Term No., 252. John W. Collier, administrator of James E. Ranck, deceased, appellant, vs. The United States and The Apache Indians. Filed March 7th, 1898.

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